

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

|                           |   |                              |
|---------------------------|---|------------------------------|
| UNITED STATES OF AMERICA, | ) |                              |
|                           | ) | Civil Case No. 1:18-cv-01011 |
| Plaintiff,                | ) |                              |
|                           | ) |                              |
| v.                        | ) |                              |
|                           | ) |                              |
| TERRENCE P. KRISS,        | ) |                              |
|                           | ) |                              |
| Defendant.                | ) |                              |
| _____                     | ) |                              |

**COMPLAINT**

The plaintiff United States of America, pursuant to 26 U.S.C. § 7401, at the direction of a delegate of the Attorney General of the United States, and with the authorization and sanction of a delegate of the Secretary of the Treasury of the United States, brings this civil action to reduce to a judgment the federal tax liabilities owed by the defendant Terrence P. Kriss. For its complaint, the United States alleges as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Jurisdiction is conferred upon the district court pursuant to 26 U.S.C. § 7402(a), and 28 U.S.C. §§ 1331, 1340, and 1345.
2. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1396.
3. The defendant Terrence P. Kriss resides in Hillsborough County, New Hampshire, within the jurisdiction of this Court.
4. There is a related case between the parties in the United States Bankruptcy Court for the District of New Hampshire, wherein the debtor Terrence P. Kriss has filed an adversary proceeding against the creditor United States seeking, at its core, a dischargeability determination under 11 U.S.C. § 1328(a) of his federal income tax liabilities assessed for 1997,

2000, and 2008-2011, pursuant Fed. R. Bankr. P. 4007(a). *See Terrence P. Kriss v. United States (In re Terrence P. Kriss)*, Adv. Proc. No. 18-01064-BAH (Bankr. D.N.H.).

5. Pursuant to 26 U.S.C. § 6502(a)(1), the expiration of the collection statute of limitations for the 1997 income tax liabilities set forth herein is on November 7, 2018. Because the related adversary proceeding will not be resolved prior to the expiration of this statute of limitations, the United States needs to commence this action in this District Court in order to toll the running of the statute of limitations. The United States believes that the taxes and interest at issue are excepted from discharge as a matter of law.

**CLAIM TO REDUCE LIABILITIES TO JUDGMENT AGAINST TERRENCE P. KRISS**

6. The United States incorporates by reference paragraphs 1 – 5, above.

7. The defendant Terrence P. Kriss failed to timely file a return for the 1997 and 2000 federal income tax years and, as a result, the Secretary of the Treasury needed to issue notices of deficiency.

8. On the following dates, a delegate of the Secretary of the Treasury of the United States made the following assessments against the defendant Terrence P. Kriss for federal income taxes and interest for the following periods and in the following amounts, which have balances due with accruals and costs, and after abatement, as of September 10, 2018, as follows:

| <b>Federal<br/>Income Tax<br/>Period</b> | <b>Assessment<br/>Date</b> | <b>Assessment Type</b>    | <b>Amount<br/>Assessed</b> | <b>Balance due as<br/>of 9/10/2018</b> |
|--|----------------------------|---------------------------|----------------------------|--|
| 1997                                     | 3/3/2003                   | Additional Tax Assessment | \$30,568.30                | \$38,864.12                            |
|  | 3/3/2003                   | Interest                  | \$16,652.93                |  |
|  | 4/9/2018                   | Interest                  | \$18,918.88                |  |
| 2000                                     | 9/1/2003                   | Additional Tax Assessment | \$46,344.00                | \$30,255.36                            |
|  | 9/1/2003                   | Interest                  | \$2,904.72                 |  |
|  | 4/9/2018                   | Interest                  | \$14,335.85                |  |
| <b>Total</b>                             |                            |                           |                            | <b>\$69,119.48</b>                     |

9. A delegate of the Secretary of the Treasury of the United States of America properly gave notice to the defendant Terrence P. Kriss of the tax liabilities described in paragraph 8, above, and made a demand for payment of the balance due upon the defendant Terrence P. Kriss.

10. Despite such notice and demand, the defendant Terrence P. Kriss has failed, neglected, or refused to pay the federal income tax liabilities set forth above in full, and, after the application of all abatement, payments, and credits, Terrence P. Kriss, remains liable to the United States for the unpaid balance of his 1997 and 2000 federal income tax liabilities in the amount of \$69,119.48, plus statutory additions that continue to accrue from and after September 10, 2018. This balance does not include any penalties or interest thereon.

11. On June 19, 2002, Terrence P. Kriss commenced a bankruptcy case under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire, docketed as case Bk. Case No. 12-11983. The Bankruptcy Court entered a discharge under 11 U.S.C. § 1328(a) on August 23, 2017. The statute of limitations on collections was tolled from June 19, 2012, to August 23, 2017, plus six months, pursuant to 26 U.S.C. § 6503(h)(2). As a result, this action has been timely commenced under 26 U.S.C. § 6502.

12. The defendant Terrence P. Kriss failed to timely file a return for his 1997 and 2000 federal income tax years. Accordingly, the debts described in paragraph 8, above, are debts with respect to which no return was filed. The taxes and interest thereon are therefore excepted from discharge pursuant to 11 U.S.C. §§ 1328(a)(2) and 523(a)(1)(B). In this action, the United States only seeks to collect the taxes and interest thereon for the income tax years 1997 and 2000, and does not seek to collect any penalties or interest thereon that were assessed for the 1997 and 2000 income tax years, because such penalties and interest were discharged under 11

U.S.C § 1328(a).

WHEREFORE, the plaintiff United States of America prays for judgment determining:

A. That after the United States of America has filed the return of service of process, this action should be stayed until the related adversary proceeding in the United States Bankruptcy Court for the District of New Hampshire has been resolved, after which time the United States will file a status report advising the Court of the steps required to prosecute this action;

B. That the defendant Terrence P. Kriss is liable to the plaintiff United States of America for unpaid federal income tax liabilities for the years 1997 and 2000 in the amount of \$69,119.48, plus such additional amounts as may continue to accrue as provided by law from and after September 10, 2018, including interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c); and,

C. That the United States of America be awarded its costs in this action and such other and further relief as the Court deems just and proper.

**[Signature page follows]**

Dated: November 1, 2018

Respectfully submitted,

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General  
U.S. Department of Justice, Tax Division

/s/ Jeffrey N. Nuñez  
JEFFREY N. NUÑEZ  
Trial Attorney, Tax Division  
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**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeffrey N. Nuñez - Trial Attorney, Tax Division, U.S. Dept. of Justice  
P.O. Box 55, Ben Franklin  
Washington, DC 20044 // (202) 616-5218

**DEFENDANTS**

TERRENCE P. KRISS

County of Residence of First Listed Defendant Hillsborough

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Ann K. Barber, Esq.  
25 Indian Rock Rd., Ste 11  
Windham, NH 03087

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT  | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY  | OTHER STATUTES   |   |
|---|--|--|---|--|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education   | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement      |   |  |   |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
26 U.S.C. § 7401

Brief description of cause:

Collection of Federal Tax Liabilities

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
69,119.48

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/01/2018

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

)  
)  
)  
)  
)  
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)  
)  
)  
)  
)

Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: